

107TH CONGRESS
1ST SESSION

H. R. 472

To amend the Endangered Species Act of 1973 to exempt the Woodrow Wilson Bridge project from certain provisions of that Act and allow the bridge and activities elsewhere to proceed in compliance with that Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2001

Mr. RADANOVICH introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Endangered Species Act of 1973 to exempt the Woodrow Wilson Bridge project from certain provisions of that Act and allow the bridge and activities elsewhere to proceed in compliance with that Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Endangered Species
5 Act Amendments of 2000”.

1 **SEC. 2. CLARIFICATION OF TAKE DEFINITION.**

2 Section 3(19) of the Endangered Species Act of 1973
3 (16 U.S.C. 1532(19)) is amended to read as follows:

4 “(19)(A) The term ‘take’ means to harm, pur-
5 sue, hunt, shoot, wound, kill, trap, capture, or col-
6 lect, or to attempt to engage in that conduct.

7 “(B) In subparagraph (A), the term ‘harm’
8 means an action that proximately and foreseeably
9 kills or physically injures an identifiable member of
10 an endangered species.”.

11 **SEC. 3. ENSURING PUBLIC SAFETY, EXEMPTING THE WOOD-**
12 **ROW WILSON BRIDGE, AND TARGETING REG-**
13 **ULATORY AUTHORITY.**

14 Section 7(a) of the Endangered Species Act of 1973
15 (16 U.S.C. 1536(a)) is amended by adding at the end the
16 following:

17 “(5) ACTIONS EXEMPT FROM CONSULTATION
18 AND CONFERENCING.—Consultation and confer-
19 encing under paragraphs (2) and (4) is not required
20 for any agency action that—

21 “(A) is consistent with an incidental taking
22 permit issued under section 10(a)(1)(B);

23 “(B) addresses a critical, imminent threat
24 to public health or safety or a catastrophic nat-
25 ural event or compliance with Federal, State, or
26 local safety or public health requirements;

“(C) consists of routine operation, maintenance, rehabilitation, repair, or replacement to a Federal or non-Federal project or facility, including—

“(i) the Woodrow Wilson Bridge project in Maryland and Virginia; and

“(ii) operation of a project or facility in accordance with a previously issued Federal license, permit, or other authorization; or

“(D) permits activities that occur on private land.

“(6) ACTIONS NOT PROHIBITED.—An agency action shall not constitute a taking of a species prohibited by this Act or any regulation issued under this Act if the action is consistent with—

“(A) an incidental taking permit issued under section 10(b)(1)(A); or

“(B) the terms and conditions specified in a written statement provided under subsection (b)(3) of this section.”.

SEC. 4. STANDARDS FOR RENDERING TAXONOMIC DETERMINATIONS OF SPECIES AND SUBSPECIES.

Section 4(b)(1) (15 U.S.C. 1533(b)(1)) is amended by adding at the end the following:

1 “(C) Within 18 months after the date of the enact-
 2 ment of the Endangered Species Act Amendments of
 3 2000, the Secretary shall promulgate scientifically valid
 4 standards for rendering taxonomic determinations of spe-
 5 cies and subspecies. The standards shall provide that to
 6 be eligible for determination as a subspecies under this
 7 Act, a subspecies must be reproductively isolated from
 8 other subspecific population units and must constitute a
 9 distinct component in the genetic makeup of the species.”.

10 **SEC. 5. COMPENSATION FOR FEDERAL TAKINGS OF PRI-**
 11 **VATE PROPERTY.**

12 (a) IN GENERAL.—Section 13 of the Endangered
 13 Species Act of 1973 (87 Stat. 902) is amended to read
 14 as follows:

15 “RIGHT TO COMPENSATION

16 “SEC. 13. (a) PROHIBITION.—No agency may take
 17 an action under this Act affecting privately owned prop-
 18 erty that results in the diminishment of the value of any
 19 portion of that property by an amount equal to or greater
 20 than 25 percent of the value of that portion unless com-
 21 pensation is offered in accordance with this section.

22 “(b) COMPENSATION FOR DIMINISHMENT.—Any
 23 agency that takes an action referred to in subsection (a)—

24 “(1) shall compensate the property owner for
 25 the diminution in value of any portion of that prop-
 26 erty resulting from the action; or

1 “(2) at the option of the owner, shall buy that
2 portion of the property by paying the fair market
3 value of the portion, determined based on the value
4 of the property before the diminution and without
5 regard to the presence on the property of a species
6 listed under section 4(c), or the use of the property
7 by such a species.

8 “(c) REQUEST OF OWNER.—A property owner seek-
9 ing compensation under this section shall make a written
10 request for compensation to the agency whose action
11 would limit the otherwise lawful use of property. The re-
12 quest shall, at a minimum, identify the affected portion
13 of the property, the nature of the diminution, and the
14 amount of compensation claimed.

15 “(d) CHOICE OF REMEDIES.—If the parties have not
16 reached an agreement on compensation within 180 days
17 after the written request is made, the owner may elect
18 binding arbitration through alternative dispute resolution
19 or seek compensation due under this section in a civil ac-
20 tion. The parties may by mutual agreement extend the pe-
21 riod of negotiation on compensation beyond the 180-day
22 period without loss of remedy to the owner under this sec-
23 tion. In the event the extension period lapses the owner
24 may elect binding arbitration through alternative dispute

1 resolution or seek compensation due under this section in
2 a civil action.

3 “(e) ALTERNATIVE DISPUTE RESOLUTION.—

4 “(1) IN GENERAL.—In the administration of
5 this section—

6 “(A) arbitration procedures shall be in ac-
7 cordance with the alternative dispute resolution
8 procedures established by the American Arbi-
9 tration Association; and

10 “(B) in no event shall arbitration be a con-
11 dition precedent or an administrative procedure
12 to be exhausted before the filing of a civil action
13 under this section.

14 “(2) REVIEW OF ARBITRATION.—

15 “(A) APPEAL OF DECISION.—Appeal from
16 arbitration decisions shall be to the United
17 States District Court for the district in which
18 the property is located or the United States
19 Court of Federal Claims in the manner pre-
20 scribed by law for the claim under this section.

21 “(B) RULES OF ENFORCEMENT OF
22 AWARD.—The provisions of title 9, United
23 States Code (relating to arbitration), shall
24 apply to enforcement of awards rendered under
25 this section.

1 “(f) CIVIL ACTION.—An owner who prevails in a civil
2 action against any agency pursuant to this section shall
3 be entitled to, and such agency shall be liable for, just
4 compensation, plus reasonable attorney’s fees and other
5 litigation costs, including appraisal fees.

6 “(g) SOURCE OF PAYMENTS.—Any payment made
7 under this section shall be paid from the responsible agen-
8 cy’s annual appropriation supporting the agency’s activi-
9 ties giving rise to the claim for compensation. If insuffi-
10 cient funds are available to the agency in the fiscal year
11 in which the award becomes final the agency shall pay the
12 award from appropriations available in the next fiscal
13 year.

14 “(h) DEFINITIONS.—For the purposes of this
15 section—

16 “(1) the term ‘agency’ has the meaning given
17 that term in section 551 of title 5, United States
18 Code;

19 “(2) the term ‘agency action’ means any action
20 or decision taken by any agency that at the time of
21 such action or decision adversely affects private
22 property rights;

23 “(3) the term ‘fair market value’ means the
24 likely price at which property would change hands,
25 in a competitive and open market under all condi-

1 tions requisite to fair sale, between a willing buyer
2 and willing seller, neither being under any compul-
3 sion to buy or sell and both having reasonable
4 knowledge of relevant facts, prior to occurrence of
5 the agency action;

6 “(4) the term ‘just compensation’—

7 “(A) means compensation equal to the full
8 extent of a property owner’s loss, including the
9 fair market value of the private property taken,
10 whether the taking is by physical occupation or
11 through regulation, exaction, or other means;
12 and

13 “(B) shall include compounded interest
14 calculated from the date of the taking until the
15 date the United States tenders payment;

16 “(5) the term ‘owner’ means the owner or pos-
17 sessor of property or rights in property at the time
18 the taking occurs, including when—

19 “(A) the statute, regulation, rule, order,
20 guideline, policy, or action is passed or promul-
21 gated; or

22 “(B) the permit, license, authorization, or
23 governmental permission is denied or sus-
24 pended;

1 “(6) the term ‘property’ means land, an interest
2 in land, proprietary water rights, and any personal
3 property that is subject to use by the Federal Gov-
4 ernment or to a restriction on use;

5 “(7) the term ‘private property’ or ‘property’
6 means all interests constituting real property, as de-
7 fined by Federal or State law, protected under the
8 fifth amendment to the United States Constitution,
9 any applicable Federal or State law, or this section,
10 and more specifically constituting—

11 “(A) real property, whether vested or
12 unvested, including—

13 “(i) estates in fee, life estates, estates
14 for years, or otherwise;

15 “(ii) inchoate interests in real prop-
16 erty such as remainders and future inter-
17 ests;

18 “(iii) personalty that is affixed to or
19 appurtenant to real property;

20 “(iv) easements;

21 “(v) leaseholds;

22 “(vi) recorded liens; and

23 “(vii) contracts or other security in-
24 terests in, or related to, real property;

1 “(B) the right to use water or the right to
2 receive water, including any recorded liens on
3 such water right; or

4 “(C) rents, issues, and profits of land, in-
5 cluding minerals, timber, fodder, crops, oil and
6 gas, coal, or geothermal energy.”.

7 (b) CONFORMING AMENDMENT.—The table of con-
8 tents at the end of the first section is amended by striking
9 the item relating to section 13 and inserting the following:

“Sec. 13. Right to compensation.”.

